

**BEFORE THE APPEALS BOARD  
FOR THE  
KANSAS DIVISION OF WORKERS COMPENSATION**

<b>ELLEN S. POLAND</b>	)	
Claimant	)	
VS.	)	
	)	Docket No. 155,182
<b>STATE OF KANSAS</b>	)	
Respondent	)	
AND	)	
	)	
<b>STATE SELF-INSURANCE FUND</b>	)	
Insurance Carrier	)	
AND	)	
	)	
<b>KANSAS WORKERS COMPENSATION FUND</b>	)	

**ORDER**

Respondent appealed Administrative Law Judge Bryce D. Benedict's April 13, 1999, preliminary hearing Order.

**ISSUES**

In an earlier preliminary hearing order, the Administrative Law Judge authorized psychiatrist Steve E. Shelton, M.D., to treat claimant for psychological problems. Claimant contends she suffered severe debilitating psychological problems after she was sexually assaulted by a physician employed by the respondent to treat an April 28, 1989, work-related foot and ankle injury.

The preliminary hearing Order, that is the subject of this appeal, results from the respondent filing an Application for Preliminary Hearing requesting that Dr. Shelton be terminated as an authorized physician.

The Administrative Law Judge found claimant's sexual assault by one of her treating physicians was a consequence of the primary work-related injury and compensable. The Administrative Law Judge also denied respondent's request to terminate claimant's psychiatric treatment with Dr. Shelton.

Respondent contends claimant's sexual assault by one of her treating physicians is not compensable because it did not arise out of and in the course of her employment. Furthermore, respondent argues that claimant's need for psychiatric treatment is not related to the sexual assault but is instead related to claimant's severe preexisting psychological problems.

Both claimant and the Workers Compensation Fund request the Appeals Board to affirm the Administrative Law Judge's preliminary hearing Order. They contend the sexual assault arose out of and in the course of her employment because it occurred while she was receiving medical treatment for her work-related foot and ankle injury. They further argue that claimant needs continuing psychiatric treatment because her preexisting psychological problems were aggravated and made worse as a result of the sexual assault.

#### **FINDINGS OF FACT AND CONCLUSIONS OF LAW**

After reviewing the preliminary hearing record and considering the briefs of the parties, the Appeals Board makes the following findings and conclusions:

Respondent's issue that questions whether claimant's sexual assault by her treating physician is compensable is an issue that the Appeals Board has jurisdiction to review. See K.S.A. 1998 Supp. 44-534a.

But the issue of whether claimant is entitled to ongoing psychological treatment is a question concerning medical treatment and is not an issue that can be reviewed by the Appeals Board from a preliminary hearing order. The Administrative Law Judge has the authority to grant or to deny a request for medical treatment or a request to terminate medical treatment. Therefore, the Appeals Board, at this stage of the proceedings, does not have jurisdiction to review the Administrative Law Judge's decision that Dr. Shelton should continue to treat claimant for her psychological problems. See K.S.A. 1998 Supp. 44-534a.

On April 28, 1989, claimant injured her right foot and ankle while employed by the respondent. Respondent provided medical treatment for the injury. On April 15, 1991, respondent referred claimant to Vinod N. Patel, M.D., for EMG testing. During claimant's visit to Dr. Patel, she claims the doctor sexually molested her. As a result of this sexual assault, claimant claims her preexisting psychological problems were aggravated and made worse. Further, claimant contends the assault caused her to develop a new psychological problem diagnosed as agoraphobia. Claimant also asserts she has a need for continuing psychiatric treatment as a result of the assault.

The Appeals Board concludes that claimant's sexual assault by one of her treating physicians is a consequence of her original work-related foot and ankle injury and is thus compensable under the Act. The original work-related injury was the reason claimant was referred to Dr. Patel for treatment. During that treatment, claimant was sexually assaulted

by Dr. Patel. Accordingly, since claimant was seeking treatment for a work-related physical foot and ankle injury, any aggravation or new injury that claimant received during such treatment is compensable.<sup>1</sup>

As noted above, the Administrative Law Judge also denied respondent's request to terminate claimant's psychological treatment with Dr. Shelton. But the Appeals Board does not have to jurisdiction to review this preliminary hearing issue.

**WHEREFORE**, it is the finding, decision, and order of the Appeals Board that Administrative Law Judge Bryce D. Benedict's April 13, 1999, preliminary hearing Order should be, and is hereby, affirmed.

**IT IS SO ORDERED.**

Dated this \_\_\_\_ day of September 1999.

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BOARD MEMBER

c: Robert E. Tilton, Topeka, KS  
Scott M. Gates, Topeka, KS  
Jerry R. Shelor, Topeka, KS  
Bryce D. Benedict, Administrative Law Judge  
Philip S. Harness, Director

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<sup>1</sup>See Roberts v. Krupka, 246 Kan. 433, 790 P.2d 422 (1990). In Roberts, the Kansas Supreme Court held that any aggravation of a compensable injury or an additional injury arising from medical malpractice in the treatment thereof is a consequence of the primary injury and compensable under the act.